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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 JEROME JAMES JOHNSON,

Case No.: 3:21-cv-00263-ART-CSD

9 Plaintiff,

ORDER

10 v.

Re: ECF No. 52

11 PERRY RUSSELL, *et al.*,

12 Defendants.

13
14 Before the court is Plaintiff's Motion for Appointment of Counsel for Limited Purpose of
15 Settlement Negotiations (ECF No. 52).¹

16 While any *pro se* inmate such as Mr. Johnson would likely benefit from services of counsel,
17 that is not the standard this court must employ in determining whether counsel should be appointed.
18 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

19 A litigant in a civil rights action does not have a Sixth Amendment right to appointed
20 counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme
21 Court has generally stated that although Congress provided relief for violation of one's civil rights
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23 ¹ This is actually Plaintiff's third request for appointment of counsel. *See*, ECF No. 16, denied on 4/11/22
in ECF No. 17 and ECF No. 25, denied on 6/2/22 in ECF No. 27.

1 under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to
2 federal court and not a right to discover such claims or even to litigate them effectively once filed
3 with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

4 In very limited circumstances, federal courts are empowered to request an attorney to
5 represent an indigent civil litigant. The circumstances in which a court will grant such a request,
6 however, are exceedingly rare, and the court will grant the request under only extraordinary
7 circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986);
8 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

9 A finding of such exceptional or extraordinary circumstances requires the court evaluate
10 both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to articulate
11 his claims in light of the complexity of the legal issues involved. Neither factor is controlling; both
12 must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.
13 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Thus far, Plaintiff has shown an ability to articulate
14 his claims to the court.

15 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

16 If all that was required to establish successfully the
17 complexity of the relevant issues was a demonstration of
18 the need for development of further facts, practically all
19 cases would involve complex legal issues. Thus,
20 although *Wilborn* may have found it difficult to
21 articulate his claims *pro se*, he has neither demonstrated
22 a likelihood of success on the merits nor shown that the
23 complexity of the issues involved was sufficient to
require designation of counsel.

21 The Ninth Circuit, therefore, affirmed the District Court's exercise of discretion in denying
22 the request for appointment of counsel because the Plaintiff failed to establish the case was
23 complex as to facts or law. 789 F.2d at 1331.

1 The substantive claim involved in this action is not unduly complex. Plaintiff's Complaint
2 was allowed to proceed on the alleged Eighth Amendment failure to protect claim against
3 Defendants Kelly, Mederas, Kinder, Russell, Adams, and Gibson. (ECF No. 3 at 8.) This claim is
4 not so complex that counsel needs to be appointed to prosecute the case.

5 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of
6 the likelihood of success on the merits of his claims. In addition, as stated above, Plaintiff has
7 shown an ability to articulate his claims and the legal issues involved are not complex.

8 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion for Appointment of
9 Counsel for Limited Purpose of Settlement Negotiations (ECF No. 52).

10 **IT IS SO ORDERED.**

11 DATED: February 14, 2023.

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CRAIG S. DENNEY
UNITED STATES MAGISTRATE JUDGE